
BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT FUND

Resolution No. 08-13

Adoption of New Rule and Revisions under the Indiana Administrative Code

WHEREAS, the Public Employees' Retirement Fund (the "Fund") exists to provide retirement benefits to public employees of the state of Indiana and participating political subdivisions and to their survivors and beneficiaries;

WHEREAS, the Board of Trustees of the Fund, by statute, administers the Public Employees' Retirement Fund;

WHEREAS, pursuant to Indiana Code 5-10.3-3-8, the Board of Trustees of the Fund may establish rules and regulations for the administration of the Fund without adopting rules under the processes described in [IC 4-22-2](#);

WHEREAS, the Board of Trustees of the Fund desires to adopt the rules and revisions provided for in SECTIONS 2 through 9 of this document;

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Public Employees' Retirement Fund that:

SECTION 1. The Board hereby adopts the administrative rules and revisions provided in SECTIONS 2 through 9 of this document, which is attached hereto, and directs staff to cause the rule to be published in the Indiana Administrative Code.

SECTION 2. [35 IAC 1.2-3-2](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-3-2](#) Reemployment after termination of employment; suspension of membership; withdrawal of contributions

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2-3-5](#); [IC 5-10.3](#)

Sec. 2. To cancel previous suspension, after termination of employment and withdrawal of contributions or by operation of [IC 5-10.2-3-5](#), and qualify prior service as creditable service, the individual must be reemployed in a PERF covered or TRF-covered position for a period of not less than six (6) consecutive months; however, if the employee shows to the satisfaction of the fund that there was bona fide intent to return to employment and comply with this rule and the employee was capable of performing such employment, but was prevented from working the full six (6) month period due to illness, injury, or death which occurred subsequent to the date of the reemployment, then such six (6) month requirement shall be waived. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-3-2](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Nov 21, 2008: [20090107-IR-035080955ONA](#))

SECTION 3. [35 IAC 1.2-5-1](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-5-1](#) Retirement options

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2-4](#); [IC 5-10.3](#)

Sec. 1. (a) A member who retires or becomes eligible for a disability retirement cannot change the retirement option, nor may a member who chooses a lump sum payment under [IC 5-10.2-4-2](#)(a) change this choice, nor may the beneficiary designation on the application for benefits be changed under joint and survivorship options 30, 40, or 50, after the first day of the month that benefit payments are scheduled to begin. It is immaterial whether or not a check has been sent, received, or negotiated. (See also section 13 of this rule.) **A member of the fund after June 30, 2008, may change a beneficiary designation pursuant to [IC 5-10.2-4-7](#) or [IC 5-10.2-4-7.2](#).**

(b) Under [IC 5-10.2-4-7](#), in the event that the increased retirement benefit under the integration with Social Security option prior to Social Security eligibility is calculated to be greater than an amount which is the actuarial equivalent of the retirement benefit under the normal guaranteed retirement benefit payable as a life annuity which ceases on the date of the member's death or, if later, the member's Social Security age of eligibility, then the increased retirement benefit shall be limited to such actuarial equivalent and there will be no retirement benefit payable after the age of Social Security eligibility. (In no event shall fewer than sixty (60) payments be made.)

(c) The integration with Social Security option and the cash refund annuity option may each be made only with the normal guaranteed retirement benefit.

(d) None of the retirement benefit payment options may be made in connection with any other ~~such~~ retirement benefit payment option. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1081; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Nov 21, 2008: 20090107-IR-035080955ONA*)

SECTION 4. [35 IAC 1.2-5-12](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-5-12](#) Minimum disability retirement benefit

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2-4](#); [IC 5-10.3](#)

Sec. 12. (a) The minimum monthly disability retirement benefit specified in [IC 5-10.2-4-6\(b\)](#) is one hundred dollars (\$100) only if the member chooses an annuity under [IC 5-10.2-4-2\(a\)](#) and the retirement benefit guarantee determined under [IC 5-10.2-4-7\(b\)](#), subject to the provisions of [IC 5-10.2-4-2\(b\)](#). **After December 31, 2008, under [IC 5-10.2-43](#) [sic], the minimum benefit provided by employer contributions to a retired member with at least ten (10) years creditable service not earned only as an elected official may not be less than one hundred eighty dollars (\$180).**

(b) Should the member choose a lump sum distribution of the amount in his annuity savings account under [IC 5-10.2-4-2](#) and/or a retirement benefit payment option, under [IC 5-10.2-4-7](#), other than the five (5) year guaranteed retirement benefit, the minimum disability retirement benefit shall be the actuarial equivalent of the one hundred **eighty** dollars ~~(\$100)~~ **(\$180)** under subsection (a) as determined by the rules of the board. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-12; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Nov 21, 2008: 20090107-IR-035080955ONA*)

SECTION 5. [35 IAC 2-3-1](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-3-1](#) Reemployment after retirement

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-10](#); [IC 36-8-8-11.5](#)

Sec. 1. If a re-employed member is receiving disability or retirement benefits from the 1977 Fund **and is reemployed in a position covered by this chapter [sic]**, benefits will terminate until the member has terminated service for the second time. The benefits will then be computed on the total years of credited service. **If a member is reemployed not less than thirty (30) days after retirement by the same unit in a position not covered by this chapter [sic], then the member will continue to receive benefits unless the PERF board receives from the Internal Revenue Service a determination that prohibits the implementation.** (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-3-1; filed May 9, 1979, 11:31 a.m.: 2 IR 681; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Nov 21, 2008: 20090107-IR-035080955ONA*)

SECTION 6. [35 IAC 2-5-5](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-5-5](#) 1977 Police Officers' and Firefighters' Pension and Disability Fund disability procedures

Authority: [IC 36-8-8-5](#)

Affected: [IC 4-21.5](#); [IC 36-8-8-12.5](#); [IC 36-8-8-13.5](#)

Sec. 5. (a) The disability application process shall be as described as follows:

(1) The local board shall submit to the state board the following documents:

(A) A completed disability application form that includes the following:

- (i) The member's name, address, and Social Security number.
- (ii) The date of the local board's hearing.
- (iii) The date the local board determined a covered impairment exists.

The local board shall use the applicable forms developed by the state board for this purpose.

(B) The applicable form developed by the state board shall require the following:

- (i) The local board to submit its determinations, including findings of fact, with regard to the existence of

- a covered impairment and the class of impairment for a fund member who was hired for the first time after December 31, 1989, or who had elected coverage under [IC 36-8-8-12.5](#) and [IC 36-8-8-13.5](#) (Class 1 duty related injury, Class 2 duty related disease, and Class 3 all other covered impairments).
- (ii) A copy of the written job description for the member's position.
 - (iii) A statement from the local board that certifies that the member cannot perform the essential functions of the job as reflected on the written job description by identifying the specific functions the member is incapable of performing.
 - (iv) A statement from the appointing authority that certifies that there is no suitable and available work in the member's department for which the member is or may be capable of becoming qualified, considering reasonable accommodations to the extent required by the Americans with Disabilities Act.
 - (v) The local board's findings with respect to self-inflicted injury, attempted suicide, commission of felony, or preexisting conditions.
 - (vi) The local board's determination on whether the impairment resulted from an accidental injury.
 - (vii) A statement that certifies that the local board's decision was communicated, in writing, to the fund member and the appointing authority.
- (C) A transcript of the local board's hearing. The transcript should be signed by the person doing the transcription and by the pension secretary reflecting that the transcript is a true and accurate report of the testimony and exhibits presented during the local board's hearing.
- (D) Copies of all exhibits accepted by the local pension board. These exhibits would include the medical evaluations of the fund member. Tests and examination results must be included.
- (E) Certification by the appointing authority or the local board with regard to the fund member's last day of pay (including the last payment for any type and all forms of paid leave).
- (F) Certification by the appointing authority of years of service.
- (2) Unless the application is complete, the 1977 Fund will not accept the application. If the application is not accepted, the 1977 Fund shall do the following:
- (A) Determine whether the file is complete.
 - (B) Send a letter to the local board stating that either a complete file has been received or the file is incomplete and will not be accepted until the specified items have been received by the 1977 Fund. If the file is incomplete, the 1977 Fund will send a letter stating the file is complete after all previously specified items have been received by the 1977 Fund.
 - (C) Once a completed file is accepted, the 1977 Fund will give the completed file to the medical authority.
- (3) The PERF board or its duly authorized representative will make an initial determination within sixty (60) days from the date the complete application is received by the 1977 Fund unless there is a delay attributable to the fund member or the appointing authority. **This The initial determination by the PERF board for members who were hired for the first time after December 31, 1989, or who had elected coverage under [IC 36-8-8-12.5](#) and [IC 36-8-8-13.5](#), shall include a determination of which disability provisions the application has been processed. class of impairment and degree of impairment.** In making this determination, the 1977 Fund shall treat a member as first hired using the member's first date of employment with the local unit where the member is currently employed. However, in the case of a fund member who directly transferred from covered employment with one (1) local unit to covered employment with another local unit, the fund member's date of employment with the first local unit shall be used. If the application is not accepted, the 1977 Fund shall do the following:
- (A) The 1977 Fund will not consider the sixty (60) day period to begin until a completed file is accepted.
 - (B) The initial determination will be mailed, by certified mail return receipt requested, to the member, the local board, and the appointing authority. An appeal of the initial determination must be filed within fifteen (15) days after receiving written notice of the initial determination pursuant to [IC 4-21.5](#).
 - (C) If the PERF board or its duly authorized representative does not make an initial determination within sixty (60) days and if the delay is not attributable to the fund member or the appointing authority, the local board's determination, or the fund member's statement in the case of an appeal of a local board determination, shall constitute the PERF board's initial determination. A letter confirming this initial determination shall be sent by the 1977 Fund to the local board, the fund member, and the appointing authority.
 - (D) The letter communicating the PERF board's initial determination shall inform the parties of the time limit on filing objections and shall clearly state that, if no objections are filed, the initial determination shall automatically become the state board's final order.
- (4) If no objection to the PERF board's initial determination is filed with the 1977 Fund within fifteen (15) days after the date of the PERF board's initial determination letter, the PERF board's initial determination shall become the PERF board's final order.
- (5) If a timely objection to the PERF board's initial determination is filed, the 1977 Fund shall follow an internal hearing procedure. The 1977 Fund shall notify the member if the appeal is not timely. Such notice will indicate that the initial determination automatically became the PERF board's final order.

(6) After receiving a timely objection to the initial determination, the 1977 Fund shall designate a hearing officer to review the case. The hearing officer must make a recommendation to the 1977 Fund with regard to a final decision within sixty (60) days after the hearing. The hearing will be recorded and a transcript prepared.

(7) Based upon the complete record and the recommendation from the hearing officer, the PERF board shall issue a final order. The PERF board may accept, but shall not be required to accept, the hearing officer's recommendation as its final order. The final order will be communicated in a letter, sent certified mail return receipt requested, to the fund member, the local board, and the appointing authority. In addition, the PERF board may do the following:

(A) The PERF board may request or accept additional information before issuing a final determination.

(B) The PERF board shall issue a final order within one hundred eighty (180) days from the date the complete application is received by the 1977 Fund unless there is a delay attributable to the fund member or the appointing authority. If an order is not issued within one hundred eighty (180) days and if the delay is not attributable to the fund member or the appointing authority, the initial determination statements shall constitute the PERF board's final order.

(b) The review of a fund member's impairment may be initiated by the 1977 Fund, the fund member, the safety board, or the local board. The review shall follow the procedure for disability applications. The cost of any medical examination required by the local board shall be paid by the party who petitioned for review.

(c) Requirements for recovered disabilitants shall be as follows:

(1) If there is a final determination that a disabilitant has recovered, the 1977 Fund shall solicit a certification from the local authorities with regard to the existence of suitable and available work on the police or fire department.

(2) Benefits will be terminated if suitable and available work on the police or fire department has been offered to the member. Benefits shall terminate in such a case regardless of the member's decision to accept or reject the employment offer from the police or fire department.

(3) A recovered member returning to the same department will not be treated as a new applicant and will not be subjected to the application process for new members in the fund.

(4) In the event a member recovers from a covered impairment, returns to active service with the police or fire department, and becomes unable to perform all suitable and available work on the police or fire department within two (2) years of returning to active duty due to a covered impairment that is based on the same condition or conditions for which disability benefits were previously paid to the member, the member shall be entitled to receive monthly disability benefits equal to the amount of the monthly disability benefits that were paid to the member at the time of the member's return to active service plus any applicable cost of living adjustments.

(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-5](#); filed May 7, 1998, 4:15 p.m.: 21 IR 3329; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Nov 21, 2008: [20090107-IR-035080955ONA](#))

SECTION 7. [35 IAC 2-5-7](#) IS ADDED TO READ AS FOLLOWS:

[35 IAC 2-5-7](#) Line-of-duty review by the 1977 fund advisory committee

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8](#)

Sec. 7. After a hearing is conducted by the local board concerning determinations of impairment for fund members who:

(1) are hired for the first time before January 1, 1990; and

(2) do not choose coverage by sections [IC 36-8-8-12.5](#) and [IC 36-8-8-13.5](#) under section [IC 36-8-8-12.4](#), pursuant to [IC 36-8-8-12.7\(r\)](#);

the 1977 fund advisory committee shall review the local board's recommendation not later than forty-five (45) days after receiving the recommendation and shall issue an initial determination regarding whether the covered impairment was incurred in the line of duty or not in the line of duty. If the 1977 fund advisory committee fails to issue an initial determination within forty-five (45) days after receiving the recommendation from the local board, the default award on whether the covered impairment was incurred in the line of duty will be the determination made by PERF's medical authority. *(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-7](#); adopted Nov 21, 2008: [20090107-IR-035080955ONA](#))*

SECTION 8. [35 IAC 4-4-2](#) IS ADDED TO READ AS FOLLOWS:

35 IAC 4-4-2 Vesting of benefits

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10-5.5-22](#)

Sec. 2. Vesting. A participant is vested under this fund upon:

- (1) accumulating fifteen (15) years of creditable service; or**
- (2) for an officer who becomes a participant after becoming fifty (50) years of age, accumulating ten (10) years of creditable service. Pursuant to [IC 5-10-5.5-22](#), officers who become participants after becoming fifty (50) years of age will not be eligible for the DROP until they have accumulated ten (10) years of service.**

(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 4-4-2](#); adopted Nov 21, 2008: [20090107-IR-035080955ONA](#))

SECTION 9. [35 IAC 1.2-5-6](#) IS REPEALED.

DATED: November 21, 2008

Ken Cochran

Chairman

Board of Trustees

Public Employees' Retirement Fund

Resolution adopted by a vote of: 5 in favor and 0 opposed on this 21st day of November 2008.

Ken Cochran

Chairman

Board of Trustees

Public Employees' Retirement Fund

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